



2024:DHC:2780



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 2nd April, 2024*

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ARB.P. 1256/2023**SWASTIK PIPE LTD**

..... Petitioner

Through: Mr. Sanjay Jain and Ms. Ankita
Kedia, Advocates (M: 7062626938).

versus

**MR. ROHIT SHARMA SOLE PROPRIETOR, M/S. STAR
INDUSTRIES**

..... Respondent

Through: None.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner-Swastik Pipe Ltd under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator for adjudication of disputes. The present dispute arises out of alleged failure of payment of dues by the Respondent for purchase of Cold Rolled Strips (*hereinafter*, 'C.R. Strips') from the Petitioner company. It is averred that the transaction between the parties is governed by the arbitration clause contained in the terms and conditions of the tax invoice/s raised when the goods were supplied. Further, it is stated that the pending dues were not cleared by the Respondent despite repeated reminders.
3. It is stated in the petition that a total amount of Rs. 6,55,076/- along with interest is due on behalf of the Respondent as on 31st August, 2022. Further, the Petitioner states that a demand notice was sent to the



Respondent on 30th August, 2022. However, the Respondent has failed to pay the outstanding dues. Hence, this petition.

4. On 8th February, 2024 the Petitioner was directed to file the amended memo of parties. Accordingly, the amended memo of parties has been filed. Service through email has been effected by the Registry.

5. Further on 8th February, 2024, the Court referred the matter to the Delhi High Court Mediation and Conciliation Centre. The relevant portion of the said order is extracted hereinunder:

*“6. Considering that in **ARB.P.1258/2023** as also the above-mentioned arbitration petitions, the dispute appears due to have arisen due to change of management, **all these matters are referred to the Delhi High Court Mediation and Conciliation Centre.** The Registry shall issue notice on the email and mobile number.*

*7. **The parties are free to appear before the Delhi High Court Mediation and Conciliation Centre on 14th March, 2024 at 3:00 pm.**”*

6. It is averred in the petition that the present dispute is to be adjudicated in terms of the arbitration clause present in the tax invoices exchanged between the parties. The tax invoice contains an arbitration clause which reads as under:-

“2. All disputes, touching and/or concerning this bill, shall be, solely, resolved by an arbitrator duly appointed by the Hon’ble Delhi High Court under the Arbitration and Conciliation Act, 1996, as amended unto date or any repeat thereof. The seat of arbitration shall be Delhi and shall be solely and exclusively subject to Delhi jurisdiction. The language of arbitration proceedings shall be English.”



7. In the recent judgment of this Court in *SRF Ltd. v. Jonson Rubber Industries Ltd* [Judgement dated 12th March, 2024 in ARB.P. 854/2023] it was held that an arbitration clause contained in the tax invoices is binding between the parties. The relevant portion of the judgement is extracted hereinunder:-

“24. In the present case, the parties have a running account which is not in dispute. Two purchase orders may have been placed by the Respondent and various invoices may have been issued by the Petitioner. These invoices clearly state that the terms and conditions listed at the back are applicable. Considering that the parties are in regular business dealings with each other, it cannot be said prima facie that the rear of the invoice was not supplied to the Respondent.

25. Moreover, the two purchase orders also contain a jurisdiction clause which had the heading ‘Jurisdiction for Arbitration/Dispute’. The title of this clause shows that arbitration was contemplated even in the purchase orders. Further, the above clause shows that the intention of the parties is to clearly have the disputes adjudicated in Delhi and nothing more. It does not show an intention NOT to arbitrate. The intention is to the contrary that for arbitration, the jurisdiction would be Delhi. Further the invoices explicitly incorporate an arbitration clause which cannot be disputed. The same reads as under:

*“22. ARBITRATION AND GOVERNING LAW
In case of any dispute or difference arising out of this transaction, either Party may refer the dispute for resolution to a Sole Arbitrator to be appointed by Seller in accordance with the provisions of Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. Buyer does hereby unequivocally consent to appointment of such Arbitration and is barred*



from raising any objection for referring the matter to Arbitration, appointment of Sole Arbitrator by Seller or any other matter or thing connected therewith or incidental thereto. All proceedings in such Arbitration shall be conducted in English and place of arbitration shall be New Delhi. All disputes of the terms and conditions relating to this order or otherwise arising there from between the Seller and Buyer shall be subjected to and referred to the court Competent Jurisdiction within the limits of New Delhi only.”

26. The invoices with the arbitration clause have been acknowledged and part payment has been made. The question as to whether the part-payments were towards these very invoices or not would become a question of evidence.”

8. Thus, the arbitration clause in the tax invoice is binding between the parties.

9. Accordingly, since there is no resolution of the disputes, Mr. **Karandeep Singh Rekhi, Advocate (M: 9711903476)** is appointed as the Id. Sole Arbitrator. Considering the nature and extent of claims, the fee of the Id. Sole Arbitrator is fixed at lump sum Rs.75,000/- to be shared equally by both the parties.

10. The Petitioner still submits that the mediation in this and the connected matters- ***ARB.P.1255/2023, ARB.P.1257/2023, ARB.P.1258/2023*** is still going on and there is a possibility that the Respondent may come forward to resolve the disputes. Accordingly, let the mediation proceed before the Delhi High Court Mediation and Conciliation Centre on 26th April, 2024. If the disputes are not resolved, the Id. Sole Arbitrator who is appointed today, shall enter reference on 23rd July, 2024.



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11. No one has appeared for the Respondent. Hence, the Registry is directed to again serve the Respondent a copy of today's order, through email and mobile number present in the memo of parties, to enable the Respondent to participate in the mediation proceedings as also to ensure that the Respondent has notice of the appointment of the Sole arbitrator.
12. Ld. Counsel for the Petitioner shall also communicate this order to the Respondent who has not appeared today.
13. Petition is disposed of with all pending applications.
14. List before the Delhi High Court Mediation and Conciliation Centre on 26th April, 2024.
15. Parties to appear before the Id. Arbitrator on 23rd July, 2024.

PRATHIBA M. SINGH
JUDGE

APRIL 2, 2024

mr/rks

(corrected & released on 6th April, 2024)